

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 925 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

GEB

Versus

SULEMAN HASSAMBHAI

Appearance:

MR HS MUNSHAW for Petitioner

Mr. A.R. Shaikh and MR Ravi R Tripathi for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 25/09/97

ORAL JUDGEMENT

1. Admit. Mr. A.R. Shaikh and Mr. R.R. Tripathi appear and waive service of admission for the respondent.

2. The First Appeal is preferred by the Gujarat Electricity Board against Suleman Hassambhai on its being aggrieved by the judgment and decree dated 30th January,

1997 passed by the Joint Civil Judge, Senior Division, Junagadh in Special Civil Suit No. 171 of 1992. It appears that in a claim preferred in the suit being Spl.Civil Suit No. 171 of 1992, the Joint Civil Judge, Senior Division, Junagadh has decreed the suit and awarded Rs. 65,000/-. The suit was filed on the averment that the plaintiff was residing at Mangarole and was agriculturist and was carrying on the work of animal husbandry, which would include cattle breeding. Near his agricultural land, a small house was also situated, wherein two buffaloes and four small calves were tethered. From the evidence, it transpires that out of the four calves, one was a she - buffalo while the other three were he buffaloes and the court has after considering the evidence on record as well as the certificate which are at Exhibits 16, 17 and 18 allowed the entire suit of Rs. 65,000/-. The court has on the rival pleadings of the parties, framed issues at Exhibit 11 and found that on 10th January, 1992 because of negligence on the part of Gujarat Electricity Board, the accident occurred and the cattle in question died as well as the room which was situated in the agricultural field also got damaged. As regards issue No.2 whether the plaintiff proved that because of the electric shock, grass worth Rs.15,000/- was burnt and has answered the same in the affirmative. The trial court has on the aforesaid finding decreed the suit and has held that the Board was answerable for the said loss.

3. Mr. H.S. Munshaw who appears for the appellant has, however, very vehemently submitted before the court that in fact the trial court erred in valuing the four calves because only one calf was she buffalo while three calves were he buffaloes and they were all in tender age and even if their value is to be judged, it would not exceed Rs. 100/- or Rs. 200/- each calf. On the question of valuation of two buffaloes, ordinarily, the buffalo yielding around 20 liters of milk, valuation at Rs. 10,000/- each buffalo would, be just and proper and that would work out to Rs. 20,000/-. As regards, one she calf which having grown up, would have become the she buffalo and would have yielded the income out of the milk, valuation should be put around Rs. 5000/-. About the loss, which is caused to the house, the trial court has awarded the amount of Rs. 15,000/- only. While Mr. Munsha submits that it is on the higher side and a lesser amount could have been awarded. In fact, in his submission, award of lesser amount can be said to be just and reasonable. When the building is found to be substantially damaged, requiring a total repair or

replacement by another building, in my opinion, the amount of Rs. 15,000/- is just and proper and does not call for interference of this court. The total amount which is liable to be awarded thus works out to Rs. 40,000/-.

4. In view of the aforesaid award, the total amount awardable to the plaintiff works out to Rs. 40,000/-.

The trial court has awarded the full amount of Rs. 65,000/- with 12 per cent interest from the date of filing the suit till realisation. The award on interest from the date of filing of suit till realisation with cost is not required to be interfered with and the same is sustained.

5. In view of the aforesaid, the judgment and decree passed by the trial court is required to be partially modified as aforesaid i.e. instead of awarding total amount of Rs. 65,000/- the amount now awarded is Rs. 40,000/- and the rest of the judgment and decree of the trial court remain unaltered. Appellant is directed to deposit the amount within eight weeks from today in the trial court and the plaintiff shall be at liberty to withdraw the full amount. In the result, The appeal partially succeeds to the aforesaid extent only. There shall be no order as to costs in this First Appeal.

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